Supreme Court, U.S.
FILED

03-632 OCT 23 2003

OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

October Term, 2003

JOSEPH W. DUBOIS, JR., and SABINE G. DUBOIS,
Petitioners,

v.

WEST GATE VILLAGE ASSOCIATION,
Respondents.

On a Petition for Writ of Certiorari to the State of New Hampshire Supreme Court

---

PETITION FOR WRIT OF CERTIORARI

Joseph W. DuBois, Jr., *pro se*
Sabine G. DuBois, *pro se*
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QUESTION PRESENTED

1. Can a court constitutionally hear a case and assess damages against a Defendant where the state statutes have not conferred the court with Jurisdiction over subject matter?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

The Petitioners Joseph W. DuBois Jr., and Sabine G. DuBois, respectfully pray that a Writ of Certiorari issue to review the judgment of the New Hampshire Supreme Court in declining to accept an appeal of a decision by Southern Hillsborough County Superior Court and denying Petitioners Motion for Reconsideration entered in the above proceeding on June 10, 2003 and July 25, 2003 respectively.

OPINIONS BELOW

The decision of the New Hampshire Supreme Court declining to accept Petitioner's Appeal of a Decision by Hillsborough Superior Court is reprinted in the Appendix, p.A-1, infra. The Decision of the New Hampshire Supreme Court Denying Petitioner's Motion for Reconsideration is reprinted in the Appendix p. A-3. infra.

The opinions of the Southern Hillsborough County Superior Court dated August 14, 2003 and November 15, 2002 are reprinted in Appendix p. A- 4 and A- 6, infra.

JURISDICTION

The United States Supreme Court has Jurisdiction of the Petition pursuant to 28 U.S.C. Section 1257 and Supreme Court Rule 10.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following Constitutional provisions and Statutes are reprinted in the Appendix, U.S. Constitution, Amendment XIV, Section 10; 28 U.S.C.1257; New Hampshire R.S.A. 502:A:14 (I); New Hampshire R.S.A. 491:7

STATEMENT OF THE CASE

Respondent filed a number of suits against Petitioners in the Southern District of Hillsborough County Superior Court. Each of the suits involved claims considerably less than $1,500.

R.S.A. 502-A:14 provides that all claims which do not exceed $1,500 are the exclusive jurisdiction of the District and Municipal Courts.

R.S.A. 491:7 provides that the Superior Court does not have jurisdiction of the actions over which the District and Municipal Courts have exclusive jurisdiction. Petitioners filed a Motion to Dismiss with the Superior Court which the court denied. Petitioners took exception to the Court's order denying their Motion to Dismiss in order to preserve their right to appeal the decision. The Superior Court disregarded the Petitioner's argument and trial memorandum in which they contested the juris-

diction of the Court and that the court's actions violated the Petitioner's Constitutional right to due process protected by the Fourteenth Amendment to the Constitution. Following the entry of the final order of the Superior Court assessing damages against the Petitioners, they filed a timely Appeal with the New Hampshire Supreme Court appealing the superior court's denial of their Motion to Dismiss and its final order assessing damages against the Petitioners.

The petitioners first raised the Constitutional issue in the Trial Memorandum (p.A-23, infra) and later in the Notice of Appeal to the New Hampshire Supreme Court (p. A-10, infra) and their Motion for Reconsideration filed with the Superior Court (p.A-17, infra).

The Superior Court in its Decisions never addressed the issue of the lack of jurisdiction over the subject matter. Further it denied Petitioners' Request for Ruling of law that R.S.A. 502-A:14 conferred exclusive jurisdiction on the District and Municipal Courts for all claims which do not exceed $1,500. It also denied Petitioners' Request for Rulings of Law that R.S.A 491:7 excepted jurisdiction to the Superior Courts for claims which do not exceed $1,500.

REASONS FOR GRANTING THE WRIT

I. Certiorari should be granted to decide whether a court can constitutionally assess damages against a party in an action in which the state statutes have stated the court does not have jurisdiction over subject matter.

II. The decisions of the New Hampshire Supreme Court to decline to hear an appeal of a decision by a lower court and The Southern District of Hillsborough County Superior Court, which, according to state statutes, lack Jurisdiction over the subject matter, conflicts with the U.S. Constitution and case law.

The decisions of the Superior Court and the New Hampshire Supreme Court permit parties to ignore the Statutes of New Hampshire and to commence litigation in a court which lacks jurisdiction over the subject matter. Such a result would deny the other parties in this type of an action their Constitutional Right to Due Process. Fourteenth Amendment to the U.S. Constitution. It is undeniable that a court must possess jurisdiction over parties and subject matter before it can act.

The Petitioners Request for Rulings of Law states that - R.S.A. 502-A: 14 conferred Exclusive Jurisdiction on the District and Municipal Courts for all claims which do not exceed $1,500, and that R.S.A. 491:7 Excepted Jurisdiction to the Superior Courts for claims which do not exceed $1,500. Therefore, in denying these request which are unquestionably undeniable, the Superior Court's decision must have been based on the court's position which disregarded the requirements of R.S.A. 502-A:14 and R.S.A. 491:7. In so doing the court acted without regard to its jurisdictional requirements which conflicts with the Constitution and controlling cases.

Stump v. Sparkman, 435 U.S. 354
98 S.Ct, 1099 (1978)

Second National Bank of Tampa v. J. Bruce Blake, Trust 600 F. 2d 160 (8th Cir. 1979)

Close v. Fisette, 776 A 2d, 131 (2001)

Matter of Terrence K., 524 N.Y.S. 2d 996 (1998)

"where there is clearly no jurisdiction of the subject matter any authority is a usurped authority, and for the exercise of such authority, when the want of Jurisdiction is known to the Judge, no excuse is permissible."

Bradley v. Fisher, 13 Wall 335 (1871)

CONCLUSION

For the reasons set forth herein the Writ of Certiorari should issue.

Respectfully Submitted,

Joseph W. DuBois, Jr., pro se
Sabine G. DuBois, pro se
8 Grenada Circle
Nashuah, NH 03062-1429
(603) 880-7624

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2002-0796, *West Gate Village Association v. Joseph W. Dubois & a.; Joseph W. Dubois & a. v. West Gate Village Association; West Gate Village Assn. v. Joseph Dubois, Jr. & a.; West Gate Village Assn. v. Joseph W. Dubois, Jr. & a.*, the court on June 10, 2003, issued the following order:

Notice of appeal is declined. *See* Rule 7(1). West Gate Village Association's motion for summary affirmance is, therefore, moot.

The notice of appeal and any documents that were filed in this matter were provided to each justice whose name appears below.

Under Supreme Court Rule 7, the supreme court may in its discretion decline to accept an appeal from the superior, district, or probate court or from the family division. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

No justice who considered this matter voted to accept this appeal. Accordingly, the appeal was declined. If any justice who considered this matter believed the appeal should have been accepted, this case would have been scheduled for briefing.

Declined.

Brock, C.J., and Broderick, Nadeau and Duggan, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Clerk, Southern District of Hillsborough County
95-E-0423; 96-C-0005; 99-C-0194; 02-C-0009
Joseph E. Mitchell, Esquire
Daniel A. Laufer, Esquire
Mr. Joseph W. Dubois, Jr.
Ms. Sabine G. Dubois
Honorable Bernard J. Hampsey
Laura Mitchell, Supreme Court
File

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2002-0796, *West Gate Village Assoc. v. Joseph W. Dubois & a.; Joseph W. Dubois & a. v. West Gate Village Association; West Gate Village Assn. v. Joseph Dubois, Jr. & a.; West Gate Village Assoc. v. Joseph W. Dubois, Jr. & a.*, the court on July 25, 2003, issued the following order:

Joseph W. Dubois, Jr.'s motion for reconsideration is denied.

Reconsideration denied.

Brock, C.J., and Broderick, Nadeau and Duggan, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Clerk, Southern District of Hillsborough County
95-E-0423; 96-C-0005; 99-C-0194; 02-C-0009
Joseph E. Mitchell, Esquire
Daniel A. Laufer, Esquire
Mr. Joseph W. Dubois, Jr.
Ms. Sabine G. Dubois
Honorable Bernard J. Hampsey
Laura Mitchell, Supreme Court
Donna Craig, Supreme Court
File

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
SOUTHERN DISTRICT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. DUBOIS, JR. and SABINE G. DUBOIS

96-C-005, 95-E-423, 99-C-l94 and 02-C-009

FINAL ORDER REGARDING ASSESSMENTS FOR 1993 THROUGH 2001

I conducted a record hearing on August 28, 2002 and a follow-up hearing on October 30, 2002 with respect to the plaintiff's claim for assessments for the years 1996 through 2001. A summary of what transpired at the first hearing was set forth in my preliminary order dated August 28, 2002. The plaintiff's presentation was based upon its pleadings and exhibits as well as the testimony of Vernon Maine and Alan Brown.

Limited testimony was provided by Mr. DuBois. Both sides have submitted requests for findings and rulings. While the court declines to specifically act upon the requests, all requests from either side consistent with the within order shall be deemed to be GRANTED. All other requests shall be deemed to be DENIED.

Previously, I took up the plaintiff's request for assessments with respect to 1993 through 1995. When I issued my order on April 15, 1998, I found that the defendants were obligated to West Gate for $932.06. However, Mr. and Mrs. DuBois are entitled to credits for two (2__) payments that they have made. More specifically, the

defendants paid $100.00 on June 30, 1996 and $205.00 on December 31, 1997. As requested by the plaintiff, these payments are now applied to the assessment years of 1993 through 1995. Accordingly, the net balance due the plaintiff with respect to these years has been reduced to $627.06. Regarding 1996 through 2001, the court essentially accepts the proposed order submitted by the plaintiff. Having considered the evidence and the pleadings, the court now finds and rules that the defendants are obligated to the plaintiff for unpaid assessments as follows:

1996 - $ 350.21
1997 - $ 322.71
1998 - $ 310.57
1999 - $ 378.15
2000 - $ 277.54
2001 - $ 335.11

Judgment shall now issue for the plaintiff for all pertinent years in the amount of $2,601.35, together with statutory interest and court costs.

As anticipated by the parties, a hearing shall now be scheduled before me respecting the issue of attorney's fees. One (1) hour shall be allocated for the hearing that shall be scheduled by the Clerk of Court as the calendar permits.

s.Bernard J. Hampsey, Jr.
Bernard J. Hampsey, Jr.
Presiding Justice
November 6, 2002

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
SOUTHERN DISTRICT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH w. DUBOIS, JR. and SABINE G. DUBOIS

96-C-005, 95-E-423, 99-C-194 and 02-C-009

TRIAL MANAGEMENT ORDER AND ORDER REGARDING MOTION TO DISMISS AND MOTION TO VACATE AND DISMISS

This matter came forward for consideration at the duly scheduled trial management conference. Attorney Joseph Mitchell appeared for West Gate Village Association. Joseph W. Dubois, Jr. appeared pro se for himself and his wife, Sabine G. Dubois.

Initially, it was necessary fox the court to take up two pending motions to dismiss. More specifically, Mr. Dubois filed a motion to dismiss with respect to 02-C-009 and a related motion to vacate and dismiss 96-C-005 and 99-C-l94. Attorney Mitchell filed a timely objection and a further pleading or response was filed by Mr. Dubois. As the motions to dismiss were argued extensively on the record, I will incorporate by reference the arguments presented by the parties.

Mr. Dubois takes the position that this court is without subject matter jurisdiction so that I do not have jurisdiction to even conduct the trial management conference. As Mr. Dubois sees it, in view of the amount in dispute in these cases that have been consolidated for trial, the district court has sole and exclusive jurisdiction pur-

suant to RSA 502-a. Having considered the motions and the arguments presented by Attorney Mitchell and Mr. Dubois, this court finds and rules that Mr. Dubois has failed to satisfy his burden of proof. These are not matters that may only be brought before the district court because of the jurisdictional requirements of statute. At all times pertinent, the Superior Court has been vested with jurisdiction to adjudicate the disputes between the parties. At this juncture, it is necessary, for the court to consider the two remaining files as to the contested assessments. Eventually, it will be necessary to conduct a hearing with respect to the claim by West Gate for attorney's fees. West Gate has already asserted attorney's fees for all pending matters that are in excess of $29,000.00. Clearly, jurisdiction is vested within the Superior Court. Accordingly, Mr. Dubois' motion to dismiss and his motion to vacate and to dismiss are hereby DENIED.

Mr. Dubois may wish to perfect an appeal to the New Hampshire Supreme Court. However, he will not be allowed to do so on an interlocutory basis. Rather, these matters shall proceed to a conclusion with this court. When the matter is final, in all respects, Mr. Dubois will then have an opportunity to file an appeal with the New Hampshire Supreme Court.

As these matters have been outstanding for so long and to avoid further confusion, I will again attempt to summarize the status of these cases. First of all, two cases were consolidated years ago by Judge Dalianis. I am referring to 96-C-005 and 95-E-423. A final judgment has issued in these two matters in favor of West Gate in the amount of $931.06. Accordingly, when a final Judgment has issued in the remaining cases, the issue of attorney's fees with respect to all of the files will be scheduled and adjudicated.

On June 6, 2002, I consolidated the two remaining files and brought forward both files for the trial management conference. I am referring to 99-C-194 and 02-C-009. To break down the claims asserted by West Gate, for the years 1996 through 1998, West Gate is seeking damages for annual assessments in the amount of $983.49. For the years 1999 through 2001, West Gate is seeking an additional $973.50 for damages respecting annual assessments. Should West Gate prevail, they will also be seeking an award of attorney's fees with respect to these consolidated cases.

Having disposed of the pending motions to dismiss, this trial management conference was conducted with respect to the two consolidated matters that are remaining for adjudication as to the contested assessments or 99-C-194 and 02-C-009. These matters are scheduled for trial during the week of August 26, 2002. Attorney Mitchell is not available on Monday or Tuesday of that week. He has informed the court that a half-day will be required for the hearing. Mr. Dubois did not disagree. Both parties are available on August 28, 29 and 30. Therefore, the Clerk's office shall contact the parties at the appropriate time and specifically inform them as to when this half-day merits hearing will be heard before the undersigned Justice.

So ordered.

August 13, 2002

s.Bernard J. Hampsey, Jr.
Bernard J. Hampsey, Jr.
Presiding Justice

THE STATE 0F NEW HAMPSHIRE
Southern District of Hillsborough County
30 Spring Street
P.O. Box 2072
Nashua, NH 03061 2072
603 883-6461

NOTICE OF DECISION

JOSEPH W DUBOIS JR
8 GRENADA CIRCLE
NASHUA NH 03062

96-C-0005
West Gate Village Assoc. v. Joseph W. & Sabine G. Dubois

99-C-0194
West Gate Village Assn. v. Joseph & Sabine Dubois, Jr.

95-E-0423
Joseph W. & Sabine G. Dubois v. Westgate Village Assn.

02-C-0009
West Gate Village Assoc. v. Joseph W. Dubois, Jr., et al

Please be advised that on 12/16/2002 Judge Hampsey, Jr. made the following order relative to:

Motion to Reconsider ; Denied

12/17/2002

Marshall A. Buttrick
Clerk of Court

cc: Joseph E Mitchell Esq.
Sabine G. Dubois

SUPREME COURT DOCKET NUMBER
NOTICE OF APPEAL
(RULE 7)

Within thirty days from the date on the clerk's written notice of a decision on the merits, unless otherwise provided by law and except as otherwise provided by Rule 7 in criminal and probate appeals, the moving party shall file (a) 1 copy of this notice of appeal and of the attachments to it with each of the other parties, and with the attorney general in a criminal case, (b) either 2 or 3 copies with the clerk of the lower court depending upon whether a judge, or master and judge decided the case and (c) the original and 15 copies with the clerk of the supreme court. The moving party shall pay the filing fee simultaneously with the filing of the notice of appeal.

CASE TITLE (Full Name)
West Gate Village v. Joseph W. Jr. & Sabine G. DuBois

APPEAL FROM Southern District Hillsborough Superior COURT (Municipality or county, and name of court)
Date of:
(a) Clerk's notice: December 17, 2002
(b) sentencing (criminal):
(c) probate court filing:

Trial Judge; Master; Other:
Honorable Bernard J. Hampsey Jr.

Which side is the moving party:
plaintiff, defendant, or other?
Defendants
If other, please specify:

Court Reporter or Machine Operator: Diane Boucher
Consolidated
Docket No. below: 95-E-0423, 96-C-0005, 99-C-0194, 02-C-0009

Trial Counsel Below:
For the Plaintiff or State:
Joseph E. Mitchell, Esquire
Post Office Box 446
Merrimack, NH 03054-0446

For Defendant
Joseph W. DuBois Jr., Pro se.
8 Grenada Circle
Nashua, NH. 03062 - 1429

If party is a corporation or association, give the names and addresses of parent, subsidiaries, and affiliates (to extent known. N/A

MOVING PARTY'S COUNSEL
IN SUPREME COURT:
Name
Joseph W. DuBois Jr., Pro se.
Address
8 Grenada Circle
Nashua, NH. 03062-1429
Telephone 603 - 880 - 7624

OPPOSING PARTY'S COUNSEL
IN SUPREME COURT:
Name
Joseph E. Mitchell, Esquire
Address
Post Office Box 446
Merrimack, NH. 03054

Telephone
603 - 424 - 7370

Number of day's of trial: 2 day

Dates of hearing and/or trial: August 28, 2002 and October 30, 2002

Does the moving party waive oral argument?
NO

List the exhibits necessary to determine the questions raised on appeal:

See Appendix

BRIEF DESCRIPTION of NATURE of CASE and RESULT: On July 30, 2002 the defendant filed a motion to dismiss on the grounds that The Superior Court lacked jurisdiction as required by R.S.A. 502-A: 14 and R.S.A. 490:7. The Court denied the motion to dismiss and the defendant took exception to the Court's order and reserved his right to appeal. At the hearing on the merits the defendant again raised the issue of the Court's lack of jurisdiction by way of his memorandum and requests for findings of fact and rulings of law. The Court entered an order assessing damages against the defendant and failed to address the issues of the Court's lack of Jurisdiction. Thereafter the defendant filed a motion for reconsideration, which the Court denied on December 17, 2002. Thereafter the defendant filed this notice of appeal.

STATUTE, ORDINANCE, REGULATION, RULE, OR OTHER LEGAL AUTHORITY UPON WHICH THE CLAIM OF CIVIL OR CRIMINAL LIABILITY WAS BASED.

R.S.A. 502-A:14
R.S.A. 490:7 and,
Section I Fourteenth Amendment to the United States Constitution

SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. SEE RULE 7 (7). STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH. SEE RULE 16 (3)(b).

1. Did the lower Court err in denying defendant's Request for Rulings of Law number 1 through 5 inclusive.

2. Did the lower Court err in denying defendant's Motion to Dismiss.

3 . Did the lower Court err in its order assessing damages against the defendant.

4. Did the lower Court violate the defendant's Constitutional right to due process.

WITH REFERENCE TO EACH SPECIFIC QUESTION RAISED ON APPEAL, IDENTIFYING THE QUESTION BY IT'S NUMBER, SPECIFY:

(A) The proper standard of review to be applied by the court to the question citing relevant authority:
(B) The parts of the proceeding you would designate the court reporter to transcriber, or whether an adequate written substitute could be provided in place of a transcript; and
(C) The cases(s) most relied upon to support the moving party's position.

1.A. The applicable standard of review if the lower Court misapplies the law to its factual findings is plain error. *Great Lakes Aircraft Co. v. City of Clarmont*, 135 N.H. 270, 608 A2d (1992)

1.B. There is nothing to transcribe. The appeal is based upon the written decisions, motion to dismiss and the request for rulings of law, and defendant's motion for reconsideration.

1.C. The appellants rely upon the following cases.
Howard v. Howard, 129 N.H. 657 (1987)
Cooperman v. Macneil, 123 N.H. 696 (1983)
— *Klein v. Brosteem*, 9 N.H. 42 (1940)
Close v. Fisette, 776 A2d. 131 (N.H. 2001)
Tseatsor v. Tseatsor, 744 A2d. 133 (N.H. 1999)

2.A. The applicable standard of review if the lower Court misapplies the law to its factual findings is plain error. *Great Lakes Aircraft Co. v. City of Clarmont,* 135 N.H. 270, 608 A2d (1992)

2.B. There is nothing to transcribe. The appeal is based upon the written decisions, motion to dismiss the request for rulings of law, and defendant's motion for reconsideration. *Great Lakes Aircraft Co. v. City of Clarmont,* 135 N.H. 270, 608 A2d (1992)

2.C. *Cooperman v. Macneil,* 123 N.H. 696 (1983)
Klein v. Brosteem, 9 N.H. 42 (1940)
Close v. Fisette, 776 A2d. 131 (N.H. 2001)
Tseatsor v. Tseatsor, 744 A2d. 133 (N.H. 1999)

3.A. The applicable standard of review if the lower Court misapplies the law to its factual findings is

plain error. *Great Lakes Aircraft Co. v. City of Clarmont*, 135 N.H. 270, 608 A2d (1992)

3.B. There is nothing to transcribe. The appeal is based upon the written decisions, motion to dismiss, the request for rulings of law, and defendant's motion for reconsideration. *Great Lakes Aircraft Co. v. City of Clarmont,* 135 N.H. 270, 608 A2d (1992)

ATTACH TO THIS FORM THE DECISION BELOW, THE CLERK'S WRITTEN NOTICE OF THE DECISION BELOW, ANY ORDER DISPOSING OF THE TIMELY - FILED POST TRIAL MOTION, AND SUCH OTHER PLEADINGS AND DOCUMENTS AS THE COURT NEEDS TO EVALUATE THE SPECIFIC QUESTIONS RAISED ON APPEAL AND TO DETERMINE WHETHER THE APPEAL IS TIMELY FILED. LEGAL MEMORANDA, INCLUDING LEGAL MEMORANDA FILED WITH THE TRIAL COURT, SHALL NOT BE SUBMITTED WITHOUT THE PRIOR APPROVAL OF THE CLERK. INCLUDE A TABLE OF CONTENTS LISTING EACH ATTACHMENT AND REFERRING TO SEQUENTIALLY - NUMBERED PAGES. IF THE PARTIES REQUESTS FOR FINDINGS AND RULINGS ARE ATTACHED, NOTE ON THE RIGHT SIDE OF THE PAGE WHETHER EACH REQUEST WAS GRANTED, DENIED, OR NOT RULED UPON (RULE 6 (5)). REGARDING THE TEXT OF RELEVANT CONSTITUTIONAL, STATUTORY, AND OTHER DOCUMENTS, *SEE* RULE 7 (6).

CERTIFICATIONS

1. I hereby certify that every issue specifically raised has been presented to the court below and has

been properly preserved for appellate review by a contemporaneous objection or where appropriate, by a properly-filed pleading.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se.

December 23, 2002

2. I hereby certify that copies of this notice of appeal have been served on all parties to the case and have been filed with the clerk of the court from which the appeal is taken in accordance with Rule 26 (2).

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se.
Moving Party

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-C-0009
99-C-194
96-C-005
95-E-0423

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
V.
JOSEPH W. JR., AND SABINE G. DUBOIS

DEFENDANT'S MOTION FOR RECONSIDERATION

NOW COMES, the defendants, Joseph W. and Sabine G. DuBois pro se, pursuant to Superior Court Rule 59-A and moves the Court for reconsideration of its Final Order. Regarding Assessments for 1993 through 2001, entered on November 15, 2002. The defendant submits the Court failed to comply with R.S.A. 491:15 which requires that the Court submit a statement of facts and legal rulings when requested by either party. *Howard v. Howard*, 129 N.H. 657 (1987).

Although it may not be necessary for the trial judge to respond expressly to every specific request filed by the defendant, he is obligated to make a finding of the "basic" or "essential" facts that are sufficient to support the ultimate decision. *ID.*

The object is to allow an opportunity for adequate review by Supreme Court by providing the Court with the factual basis for the trial court's decision in terms of facts found and law applied. *ID.*

The defendant is entitled to have the facts found separately and with such fullness and detail as to enable the defendant to fairly test the correctness of the legal conclusions, *Jaskolka v. City of Manchester*, 132 N.H. 528 (1989). That, the trial court has failed to do. It has failed to explain the facts it found in arriving at the amount of assessment. The trial court has failed to respond to the defendant's request for rulings of law numbered 11 through 27 which the defendant submits is essential for the Court's ultimate decision.

Unless the trial court can explain the facts upon which it relied to arrive at the conclusion as to the number of members of the Association present at various annual meetings, the number of members of the Association who voted in the affirmative for the various assessments, there is no way in which the trial court could have determined whether an assessment for any given year was validly adopted in accordance with the By-Law.

Since there was no such evidence introduced, the defendant submits the trial court cannot ultimately determine that any assessment was validly adopted.

The Court in its order stated that all requests for rulings of law consistent with the order shall he deemed granted and all other requests deemed to be denied. Therefore, the following requests must be deemed denied because they are inconsistent with the order.

1. Actions in which the claims do not exceed $1,500.00 are the exclusive jurisdiction of the District and Municipal Court.

2. The Superior Court does not have jurisdiction of actions in which the claims do not exceed $1,500.00.

The only way the trial court could have denied these requests is that it misapprehended R.S.A. 502-A:14 and R.S.A. 490:7. Clearly R.S.A. 502-A:14 states that all claims which do not exceed $1,500, are the exclusive jurisdiction of the District and Municipal Court and R.S.A. 490:7 is clear that the Superior Court does not have jurisdiction of actions over which the District and Municipal Courts have exclusive jurisdiction.

As required by the Fifth and Fourteenth Amendments to the United States Constitution, before a Court may act with due process it must have subject matter jurisdiction as well as personal jurisdiction over the parties; *Matter of Terrence K*, 524 N.Y.S. 2d 996 (1998). It is undisputed that a judge must be cognizant of and give effect to the statutes and rules of his jurisdiction. *Miller v. Willingham*, 400 F. 2d 873 (1968), *In re SGRO*, 310 A.2d 459 (N.J. 1973); 48A C.J.S. Section 56.

The law in New Hampshire is clear and long-standing:

> " Where exclusive jurisdiction is expressly conferred upon a Court, no other tribunal may exercise such jurisdiction. Waivers cannot confer subject-matter jurisdiction where it does not exist, and any action taken by a Court without jurisdiction is void and may be challenged at any stage of the Proceedings. *Cooperman v. MacNeil*, 123 N.H. 696 (1983); *Klein v. Bronstein*, 91 N.H. 42 (1940)

And is presently the same. *Close v. Fisette*, 776 A. 2d 131 (2001)

> "A decision rendered by a Court without subject matter jurisdiction is void."

In fact the United States Supreme Court is so protective of the Constitutional rights of parties before the Courts that it has determined that a judge who acts on subject matters over which his Court lacks jurisdiction loses his judicial immunity. *Stump v. Sparkman*, 435 U.S. 354, 98 S. Ct. 1099 (1978) *Bradley v. Fisher*, 13 Wall 335 (1871).

In the Bradley case the Court determined:

> "Where there is clearly no jurisdiction over the subject matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible".
>
> "Judges are absolutely immune from liability for damages when performing all acts, even if their actions are in error or performed with malice *provided there is not a clear absence of all jurisdiction over subject matter and person. Beam v. Daihl*, 767 A.2d 585 (Pa. Super. 2001)"

Plaintiff's Counsel had raised the issue of the timelines of the defendant in raising the issue of the lack of subject matter jurisdiction:

> "A challenge to subject matter jurisdiction may be raised at any time during the proceedings, including on appeal and may not be waived." 776 A. 2d supra at page 133. *Tsiatsios v. Tsiatsios*, 744 A.2d (N.H. 1999)

Section I of the Fourteenth Amendment to the United States Constitution provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, deprives and person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." For the Court to act in this instance where it does not have jurisdiction over subject matter is a denial of the defendant's Constitutional right to due process.

For the reasons submitted the Court must reconsider its order.

November 25, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se
8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was mailed via first class mail to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 0305-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-C-0009
99-C-194
96-C-005

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

DEFENDANT'S TRIAL MEMORANDUM

The defendant, Joseph W. DuBois Jr., pro-se herewith submits his trial memorandum.

I. Factorial Background

The plaintiff has brought three actions against the defendant which are being tried together, the docket numbers of the cases as hereinabove set forth.

The amount claimed by the plaintiff in docket number 96-C-005, includes the assessments, interest, recording fees and lien preparation fees for the years 1993, 1994 and 1995 is $719.01.

The amount claimed by the plaintiff in docket number 99-C-194, includes the assessments, interest, recording fees and lien preparation fees for the years 1996, 1997 and 1998 is $858.89.

The amount claimed by the plaintiff in docket number 99-C-194, includes the assessments, interest, recording fees

and lien preparation fees for the years 1999, 2000 and 2001 is $840.98.

II. Argument

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides,

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Not to be outdone, New Hampshire provides in Part 1, Article 14 of the New Hampshire Constitution as follows:

> "Every subject of the State is entitled to a certain remedy, by having recourse to the laws, by all injuries he may receive in his person, property or character to obtain right and justice freely, and without being obliged to purchase it, completely, and without denial promptly and without delay, conformably to the laws."

The Fourteenth amendment refers to "Any Person" and Article 14 speaks about "Every Subject." Clearly, the framers of the U.S. Constitution and New Hampshire's Constitution had me in mind when drafting these respective documents. The right to due process in a provision which was adopted from the Magna Charta and is mandatory, 16 D, C.J.S. Constitutional law, Section 1428.

Further quoting C.J.S.

> "The Constitutional guaranty insuring open courts and a remedy for injuries assures to all a right to prosecute and defend actions and *imposes a duty on the court to see that justice prevails.*" (**Emphasis added**).

Fundamental and basic to one's right to due process and equal protection is the requirement that the court hearing the matter have jurisdiction to hear the matter. Without appropriate jurisdiction, there can never be due process or equal protection of the laws.

The defendant submits the Court had no jurisdiction to hear the above docketed cases. In 1991, R.S.A. 502-A14 was amended and the exclusive jurisdiction of the district courts was increased from $500.00 to $1,500.00. R.S.A. 490:7 provides that the Superior Court has jurisdiction over all actions except such actions as are required to be brought in district court under R.S.A. 502-A.

The amount of damages claimed in each of the above captioned cases is less than the amount established by the legislature as the amount within the exclusive jurisdiction of the district court.

Because the Superior Court does not have jurisdiction over subject matter of the actions, it has no authority to act. For the Superior Court to act upon matters over which it has no jurisdiction constitutes both a denial of due process and equal protection of the laws.

The New Hampshire Supreme Court has been clear in its determination that a motion to dismiss for lack of subject matter jurisdiction may be raised at any time. *Tsiatsios v. Tsiatsios,* 744 Ad 75 (N.H. 1999).

The parties cannot by waiver confer jurisdiction of subject matter where it does not exist. *Gettler-Ryan, Inc.*

v. Kashulines, 130 N.H. 15,18, 534 A.2d 276 (1987), and jurisdiction does not exist in this case.

Therefore, the Court cannot without violating the defendant's constitutionally protected rights to due process and equal protection of the laws, assert jurisdiction over the subject matter in the above captioned cases.

October 30, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr.
8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date, a copy of the foregoing was hand delivered to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-C-0009
99-C-194
96-C-005

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES, the defendants, Joseph W. Jr, and Sabine G. DuBois, pro-se., pursuant to Superior Court Rule 72 and request the Court to make the following findings of fact and rulings of law.

A. Findings of Fact

1. The defendants have paid $305.00 which has not been applied to any of the assessments.

2. The plaintiff claims the defendant owes it $189.00 for the year 1993 assessment.

3. The plaintiff claims the defendant owes it $184.00 for the year 1994 assessment.

4. The plaintiff claims the defendant owes it $175.00 for the year 1995 assessment.

5. The plaintiff claims the defendant owes it $198.00 for the year 1996 assessment.

6. The plaintiff claims the defendant owes it $195.00 for the year 1997 assessment.

7. The plaintiff claims the defendant owes it $205.00 for the year 1998 assessment.

8. The plaintiff claims the defendant owes it $225.00 for the year 1999 assessment.

9. The plaintiff claims the defendant owes it $230.00 for the year 2000 assessment.

10. The plaintiff claims the defendant owes it $235.00 for the year 2001 assessment.

11. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1993 which includes assessment, interest, recording fees and lien preparation fee is $189.00.

7. The plaintiff has failed to prove that the assessments were validly adopted by the Association.

8. Attorney's fees are not included in the amount of damages as provided by R.S.A. 502-A. at the time the Writ was prepared.

9. Attorney's fees cannot be ascertained at the time a claim for damages is commenced.

10. Attorney's fees are taxed upon the defendant in the event of recovery by the plaintiff.

11. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1993.

12. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1994.

13. The plaintiff has failed to establish the number of members of the Association present at the annual meeting at which assessments are allegedly established for the year 1995.

14. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1996.

15. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1997.

16. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1998.

17. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 1999.

18. The plaintiff has failed to establish the number of members of the Association present at the annual meetings at which assessments are allegedly established for the year 2001.

19. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1993.

20. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1994.

21. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1995.

12. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1994 which includes assessment, interest, recording fees and lien preparation fee is $270.62.

13. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1995 which includes assessment, interest, recording fees and lien preparation fee is $259.39.

14. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1996 which includes assessment, interest, recording fees and lien preparation fee is $285.56.

15. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1997 which includes assessment, interest, recording fees and lien preparation fee is $280.49.

16. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1998 which includes assessment, interest, recording fees and lien preparation fee is $292.84.

17. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 1999 which includes assessment, interest, recording fees and lien preparation fee is $313.64.

18. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 2000 which includes assessment is $230.00.

19. The amount which the plaintiff claims on its Writ of Summons the defendant owes for 2001 which includes assessment, interest, recording fees and lien preparation fee is $297.34.

B. RULINGS OF LAW

1. Actions in which the claims do not exceed $1,500.00 are the exclusive jurisdiction of the District and Municipal Court.

2. The Superior Court does not have jurisdiction of actions in which the claims do not exceed $1,500.00.

3. The claims in action number 96-C-005 do not exceed $1,500.00.

4. The claims in action number 99-C-194 do not exceed $1,500.00.

5. The claims in action number 02-C-009 do not exceed $1,500.00.

6. The plaintiff has not provided that the defendant owes the amounts claimed by the plaintiff.

22. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1996.

23. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1997.

24. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1998.

25. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 1999.

26. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 2000.

27. The plaintiff has failed to establish the number of members of the Association who voted in the affirmative for the alleged assessment for the year 2001.

October 30, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se
8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was hand delivered to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 96-C-005
99-C-194
02-C-0009

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

DEFENDANTS' NOTICE OF EXCEPTION AND RESERVATION OF THE RIGHT TO APPEAL

NOW COMES, the defendants, Joseph W. Jr, and Sabine G. DuBois, pro-se., and take exception to the Court's denial of their Motions to Dismiss and preserves their right to appeal the denial of said motion after entry of a verdict by the Court. The defendants take exception thereto on the grounds that the Court failed or refused to recognize that the Superior Court *does not have jurisdiction* of the subject matter of the litigation because the subject matter of the litigation is the *exclusive jurisdiction* of the District Court, pursuant to R.S.A. 502-A, and precludes the Superior Court from taking jurisdiction over said subject matter pursuant to R.S.A. 491:7.

August 20, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.

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8 Grenada Circle
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CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was mailed to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-C-0009
99-C-194
96-C-005

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

MEMORANDUM IN SUPPORT OF MOTION TO VACATE AND DISMISS

The defendants say that in 1991, R.S.A. 502-A:14 was amended and the exclusive jurisdiction of the district courts was increased from $500.00 to $1,500.00. R.S.A. 490:7 provides that the Superior Court has jurisdiction over all actions except such actions as are required to be brought in district court under R.S.A. 502-A. The amount of damages claimed in each of the above actions is less than the amount established by the legislation as the amount within the exclusive jurisdiction of the district court. Because the Superior Court does not have jurisdiction over subject matter of actions, therefore the Superior Court can not act in these matters. A motion to dismiss for the lack of subject matter jurisdiction may be raised at any time. *Tsiatsios v. Tsiatsios*, 744 A2d 75 N.H. (1999). The parties can not by waiver confer jurisdiction of subject matter where it does not exist. *Gettler - Ryan, Inc. v. Kashulines*, 130 N.H. 15, 18, 534 a.2d 276, 377 (1998) and Jurisdiction does not exist in this case. Therefore, the Court's order in these actions must be vacated and the

actions dismissed because the court has no jurisdiction to enter the order as entered and has no jurisdiction to act in these matters. The defendants are not required to comply with R.S.A. 57-A because of the nature of the motion.

July 30, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
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8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was hand delivered to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss SUPERIOR COURT
SOUTHERN DISTRICT DOCKET NO. 02-C-0009

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

MOTION TO DISMISS

NOW COMES, the defendants, Joseph W. Jr., Sabine G. DuBois, pro se., and moves that the above action be dismissed on the grounds the Superior Court lacks jurisdiction over the subject matter in violation of R.S.A. 491:7.

July 30, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se
8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was hand delivered to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-C-0009
99-C-194
96-C-005

SUPERIOR COURT

WEST GATE VILLAGE ASSOCIATION
v.
JOSEPH W. JR., AND SABINE G. DUBOIS

MOTION TO VACATE ORDER AND DISMISS

NOW COMES, the defendants, Joseph W. Jr., and Sabine G. DuBois, pro se., and moves that the order by the Court on November 27, 2001 be vacated and the above action be dismissed on the grounds that the Superior Court lacks jurisdiction over subject matter in violation of R.S.A. 491:7.

July 30, 2002

Respectfully submitted,

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr., Pro se
8 Grenada Circle
Nashua, NH 03062-1429
603-880-7624

CERTIFICATE OF SERVICE

I certify that on the above date a copy of the foregoing was mailed to Joseph E. Mitchell, Esquire, Post Office Box 446, Merrimack, NH 03054-0446.

s.Joseph W. DuBois Jr.
Joseph W. DuBois Jr.

TITLE LI
COURTS

CHAPTER 491
SUPERIOR COURT

Section 491:7

491:7 Jurisdiction. — The superior court shall take cognizance of civil actions and pleas, real, personal and mixed, according to the course of the common law, except such actions as are required to be brought in the district courts under RSA 502-A or the probate courts under RSA 547; of writs of mandamus and quo warranto and of proceedings in relation thereto; of actions for support for children of unwed parents; of petition and appeals relating to highways and property taken therefor and for other public use; of actions commenced in the probate or district courts where a right to jury trial is guaranteed by the constitution; of actions commenced in a district court which are transferable by statute to the superior court, of suits in equity under RSA 498:1, of petitions of divorce, nullity of marriage, alimony, custody of children and allowance to wife from husband's property for support of herself and children; of petitions for new trials; of petitions for the redemption and foreclosure of mortgages; of all other proceedings and matters to be entered in, or heard at, said court by special provisions of law; and of all other proceedings and matters cognizable therein for which other special provision is not made.

Source. RS 172:3, 5. 1855, 1659:2. 1859, 2211:3. GS 189:3. 1870, 2:1. GL 208:3. 1885, 13:1; 42:1. PS 204:4. 1901, 78:2. PL 316:6. RL 370:6. RSA 491:7. 1957, 244:6. 1963, 331:2. 1965, 327:4. 1973, 145:10. 1975, 395:4. 1992, 284:1 1, eff. Jan. 1, 1993.

TITLE LI
COURTS

CHAPTER 502-A
DISTRICT COURTS

Jurisdiction

Section 502-A:14

502-A:14 Civil Causes.

I. EXCLUSIVE JURISDICTION. All district courts shall have original and exclusive jurisdiction of civil cases in which the damages claimed do not exceed $1,500, the title to real estate is not involved and the plaintiff or defendant resides within the district. In all such actions as herein provided the parties shall be heard by the justice or special justice and the findings of fact shall be final, but questions of law may be transferred to the supreme court in the same manner as from the superior court or as provided in RSA 502-A: 17-a.

II. CONCURRENT JURISDICTION. All district courts shall have concurrent jurisdiction with the superior court of civil actions for damages in which the damages claimed do not exceed $25,000, the title to real estate is not involved and the plaintiff or defendant resides within the district where such court is located. In all such actions, unless trial by jury is claimed as provided in RSA 502-A:15, the parties shall be heard by the justice, associate justice or special justice, who shall make findings of fact which shall be final. Questions of law may be transferred to the supreme court in the same manner as from the superior court.

II-a. EXPANDED CONCURRENT JURISDICTION. The supreme court shall have the authority to increase the concurrent jurisdiction as provided in paragraph II of those district courts it selects, after consultation with the individual district courts, to hear civil actions in which the damages claimed do not exceed $50,000, the title to real estate is not involved, and the plaintiff or defendant resides within the district where such court is located. In all such actions, unless trial by jury is claimed as provided in RSA 502-A: 15, the parties shall be heard by the justice, associate justice or special justice; who shall make findings of fact which shall be final. Questions of law may be transferred to the supreme court in the same manner as from the superior court.

III. TRANSFERS TO SUPERIOR COURT. If the defendant upon entry of any action under this section within 5 days of the entry thereof or such additional time as the district court may for good cause allow file in the district court a brief statement setting forth that:

(a) There is pending in the superior court a cause arising out of the same transaction or situation on which the district court action is based or

(b) That the defendant has a claim arising out of the same transaction or situation in which his claim for damages exceeds $1,500, and

(c) Accompanies his brief statement with an affidavit under oath supporting the same, then no further proceeding shall be had in the district court, but the cause shall be at once transferred to the superior court for the county in which the district is located to be heard and tried as if originally entered in the superior court, the original entry fee and cost of transferring the action to be paid by the plaintiff but recoverable as costs if the plaintiff shall prevail. If no petition to remove is filed, the

cause shall be heard by the justice or special justice in the district court and the findings of fact shall be final, but questions of law may be transferred to the supreme court in the same manner as from the superior court.

Source. 1963, 331:1. 1965, 327:1, 2. 1967, 438:2. 1969 234:3, 4. 1972, 13:1. 1973, 261:1. 1979, 273:1. 1983, 382:1, 2. 1991, 47:2, 3. 1992, 284:37, eff. Jan. 1, 1993.

Supreme Court, U.S.
FILED
DEC 2 2 2003
OFFICE OF THE CLERK

No. 03-632

In The

Supreme Court of the United States

JOSEPH W. DUBOIS, JR., and
SABINE G. DUBOIS,

Petitioners,

v.

WEST GATE VILLAGE ASSOCIATION,

Respondent.

On Petition For A Writ Of Certiorari
To The State Of New Hampshire Supreme Court

BRIEF IN OPPOSITION

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RULE 29.6 STATEMENT

The Respondent West Gate Village Association is a New Hampshire voluntary corporation organized in accordance with Chapter 292, New Hampshire Revised Statutes Annotated. It has no parent corporation. There is no publically held company that owns 10% or more of the Corporation's stock.

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BRIEF IN OPPOSITION

The Respondent, West Gate Village Association, ("West Gate") respectfully requests that the Court deny the petition for a writ of certiorari to the State of New Hampshire Supreme Court.

INTRODUCTION

The Petitioners' principal point of appeal is unclear. On page i of their Petition, the Petitioners assert that the NH trial court, a court of general jurisdiction, should not have heard a case against the Petitioners and assessed damages against them where the State statutes have not conferred subject matter jurisdiction upon the trial court. Specifically, under NH statutes, the NH court of general jurisdiction is the Superior Court which can only hear claims for monetary damages in excess of $1,500. For claims less then $1,500, exclusive jurisdiction is given to the district court, a lower court which operates with limited jurisdiction.

In contrast, page 3 of the Petition repeats the same grounds, but adds a second one. The second ground, shown on page 4 of the Petition, seems to state that the appellants were denied due process of law when the NH Supreme Court declined to hear their appeal on the issue involving the subject matter jurisdiction of the Superior Court.

COUNTERSTATEMENT

A. Factual Background

West Gate is an incorporated association of homeowners who share certain common facilities. Pursuant to their Declaration of Covenants, an annual assessment is levied against each of the homeowners. The Petitioners are one of 417 homeowners.

In late 1995, the Petitioners sued West Gate seeking several types of relief, among which was the removal of liens placed on their property for non-payment of the annual assessments. West Gate countersued saying that it was owed assessment amounts for the years 1990 through 1995, inclusive, and West Gate was further entitled to compensation for its attorney's fees under the terms of the Declaration.

Therefore, it is the Petitioners who chose to commence their proceeding in the Superior Court, and not West Gate.

The Petitioners' claims were dismissed within months. In the years that followed, West Gate's claims for the years 1990, 1991, and 1992, were dismissed by a statute of limitations defense. By the time that the Court made its final ruling on assessments on November 15, 2002, three separate suits were pending for nine years of unpaid assessments: Superior Court docket numbers 96-C-005/95-E-432 (1993-95), 99-C-194 (1996-98), and 02-C-009 (1999-2001). These cases and years were consolidated by Court orders on February 23, 2001 and June 7, 2002. The Petitioners had made two minor payments but still owed $2,601.55.

The genesis of the obligation from the Petitioners to West Gate is the Declaration of Covenants. It states that

the annual assessment binds the land and is a personal obligation of each owner. It also says that the judgment or decree in any action brought to collect the assessment shall include, without limitation, reimbursement for costs and attorney's fees, together with interest.

The Petitioners claim that the $1,500 limit, which may have prevented the Superior Court from hearing this case, should be applied because the annual assessments were less than $1,500 in each of the three separate suits. As the Petitioners have consistently done, they ignore three important facts which clearly disqualify them from using this defense: (1) when this defense was first raised by Motion dated June 30, 2002, the Petitioners already had a partial judgment against them exceeding $15,000 as of May 26, 1998, without yet adding the interest; (2) the claims for all years 1993 through 2001 had been consolidated by the Superior Court into one case as of February 23, 2001 and June 6, 2002; and, (3) West Gate's rights were not limited to individual annual assessments but also included interest and attorney's fees exceeding $29,770, of which the Petitioners received notice on June 4, 2002.

B. Procedural History

This case dragged through the court system for many years. The first civil suit was commenced in December 1995 seeking damages for assessments, interest, costs, and attorney's fees concerning the years 1990 through 1995. The second civil suit was brought in June 1999 seeking the same damages, but for the years 1996 through 1998. The third civil suit was brought in February 2002 for the same damages, but for the years 1999 through 2001.

While these matters were pending before the Superior Court, the Petitioners made three appeals to the NH Supreme Court, and a fourth one after the final judgment. The first NH Supreme Court appeal is dated January 24, 1996. It was fully briefed and argued. The second NH Supreme Court appeal is dated June 11, 1998. It was also fully briefed and argued. The third NH Supreme Court appeal is dated January 11, 2002. The Court declined to hear this appeal. The fourth NH Supreme Court appeal is dated December 23, 2002. The Court declined to hear this appeal by order dated June 10, 2003. As of the time of the fourth NH Supreme Court appeal, the Court had entered an order finding that the Petitioners owed $2,601.35 for the consolidated years 1993 through 2001, and legal fees plus costs equaling $37,848.48.

The Petitioners' last appeal to the NH Supreme Court was denied on June 10, 2003. The Petitioners' Motion for Reconsideration of June 20, 2003 was denied by the NH Supreme Court on July 25, 2003. This appeal followed.

In their "Statement of the Case", the Petitioners assert that the Superior Court never addressed the issue of lack of jurisdiction over subject matter. However, the court specifically ruled on the Petitioners' motion concerning subject matter jurisdiction in its Order of August 13, 2002. See, Petition, page A-6.

REASONS FOR DENYING THE WRIT

I. Rule 10: No Conflict Between Courts of Appeals

United States Supreme Court Rule 10 states that a Writ of Certiorari will be granted only for compelling

reasons. Among these is the entry by a United States Court of Appeals of a decision which is in conflict with another Court of Appeals. There is no such issue in this case.

II. Rule 10: No Decision by a State Court of Last Resort on a Federal Question

Under said Rule 10, there is no decision of a state court of last resort which decides a Federal question in a way which conflicts with the decision of another state court of last resort or a United States Court of Appeals.

III. Rule 10: No State Court Decision Involving an Important Question of Federal Law

Said Rule 10 requires that a state court has decided an important question of Federal law that has not been, but should be, settled by this Court, or has decided an important Federal Question in a way that conflicts with relevant decisions of this Court. No allegations are contained in this appeal which contain an important question of Federal law, or a decision which conflicts with relevant decisions of this Court.

IV. Rule 10: Appeal Based Upon Errors of Factual Findings and Misapplication of a Properly Stated Rule of Law

On page 3 of their Petition, the Petitioners complained that the Superior Court denied their Request for Findings and Rulings, and submits exhibits in support of this. The Petition also states that statutory provisions of NH R.S.A. 520-A:14 and R.S.A. 491:7 were misapplied. If true, Rule

10 states that a Petition for Writ of Certiorari is rarely granted on these grounds.

V. Lack of State Action

The Fourteenth Amendment of the United States Constitution restricts only governmental or state action. The only power of this Court over State judgments is to correct them to the extent that they incorrectly adjudge Federal rights. (*Herb v. Pitcairn,* 1945; 65 S.Ct. 459, 463; 324 U.S. 117, 125-126; 463, 89 L. Ed. 789). The longstanding practice of this Court has been that the State Courts speak with final authority on questions of State law. (*Mulaney v. Wilber*, 1975; 95 S.Ct. 1881, 1885-1886; 421 U.S. 684, 689; 44 L. Ed. 2d 508.

VI. Lack of Statutory Authority

28 U.S.C. § 1257 gives this Court the authority to review final judgment and decrees rendered by the highest court of any state. Those grounds include the validity of a treaty or statute of the United States, the validity of a statute of any state which is repugnant to the United States Constitution, treaty, or laws, or a title, right, privilege, or immunity that is specially set up under the Constitution. To the extent presented in the Petition, the Petitioners apparently claim that the NH Superior Court acted beyond the jurisdictional limits set by NH law. However, they offer no connection between the statutory authority of 28 U.S.C. § 1257 and the alleged harm.

VII. Lack of Legal Precedent

The Petitioners cite several cases by which they apparently try to establish a common law right of Federal due process under the Fourteenth Amendment. Several cases are listed.

The first cited case is *Stump v. Sparkman*, 435 U.S. 354, 98 S. Ct., 1099 (1978). *Stump* is an appeal of the decision by the Court of Appeals of the Seventh Circuit concerning judicial immunity. While there is a brief discussion of subject matter jurisdiction in the Order, this is basically a case about the absolute immunity of an Indiana Circuit Court Judge from liability for damages even where he apparently exceeded the jurisdiction of his court.

The second cited case is *Second National Bank of Tampa v. J. Bruce Blake, Trustee*, 600 F.2d 160 (8th Circuit, 1979). This case involves the sale of property by a bankruptcy trustee and finds that the Bankruptcy Court had subject matter jurisdiction to sell certain personal property of a debtor. It has no precedential value to the Petitioners on the theory that they advance in this Appeal.

The third cited case is *Close v. Fisette*, 146 N.H. 480, 766 A.2d 131 (2001). This is a NH Superior Court case involving the interpretation of terms in an easement agreement. Although subject matter jurisdiction is discussed, the Petitioners apparently raise it for the principles that any decision rendered by a court without subject matter jurisdiction is void and that this jurisdictional issue may be raised at any time during the proceeding, including appeal. However, there is nothing in this opinion to tie state subject matter jurisdiction to a Federal issue.

The fourth cited case is *In the Matter of Terrence K.*. a decision of the Family Court, City of NY, Queens County. *In the Matter of Terrence K.*, 138 Misc. 2d 611, 524 N.Y.S. 2d 966 (Fam. Ct. 1988). This is a case involving subject matter jurisdiction over foreign diplomatic personnel. Although subject matter jurisdiction is discussed, the case seems to be based upon principles of personal jurisdiction which require the dismissal of a petition against a person covered by diplomatic immunity. Again, there is no relationship between this case and a Federal right of due process.

The fifth case cited is *Bradley v. Fisher*, 13 Wall 335 (1871). This is another judicial immunity case from an order of the criminal court in the District of Columbia, apparently a predecessor to the U.S. District Court for the District of Columbia. Although this is a case from a Federal jurisdiction, this is an order which upholds judicial immunity where judicial acts are done in excess of their jurisdiction. This is not a case involving a clear absence of jurisdiction over the subject matter which is the issue raised by the Petitioners on appeal.

In contrast, the Petitioners ignore cases that show that the Federal right of due process only arises where there is a fundamental absence of any and all right of the State to take cognizance of the cause as a matter of State law. However, where the contentions are confined to jurisdiction in the sense of a duty to rightfully decide those subjects to which the judicial power of a State extends, there is no protection by the due process clause of the Fourteenth Amendment. Mere errors of law alleged to have been committed by a State court in the performance of its duties and within the scope of authority of the State

court are non-Federal. See, *McDonald v. Oregon Railroad and Navigation Company*, 233 U.S. 665 (1914).

CONCLUSION

For all the foregoing reasons, the Respondent West Gate respectfully requests that this Honorable Court deny this Petition.

Respectfully submitted,

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(3)

No. 03-632

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In the
Supreme Court of the United States

OCTOBER TERM, 2003

JOSEPH W. DUBOIS, JR. and SABINE G. DUBOIS,
PETITIONERS,

v.

WEST GATE VILLAGE ASSOCIATION,
RESPONDENTS.

On Petition for Writ of Certiorari to the State of New Hampshire Supreme Court

REPLY BRIEF TO BRIEF IN OPPOSITION

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REPLY BRIEF

The Respondent extensively cites Supreme Court Rule 10 in its Brief in Opposition. However, despite such reference the Respondent omits an important sentence contained in Rule 10.

> "The following although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers"

Therefore, it is not critical that the Petitioner claim present any of the three reasons set forth in Rule 10.

The Respondent alleges on page 4 of its Brief in Opposition that:

> "The court specially ruled on the Petitioners motion concerning subject matter jurisdiction in its order of August 13, 2002. See Petition page A-6."

The Petitioners submit the court ruled incorrectly concerning subject matter jurisdiction. No court can assert jurisdiction over subject matter when the state statutes limit that jurisdiction. *U.S. v. Will*, 449 U.S. 200 (1980)

In light of the quotation from *Bradley v. Fisher*, 13 Wall 335 (1871) which reads;

> "Where there is clearly no jurisdiction of the subject matter any authority is a usurped authority, and for its exercise of such authority, when the court of jurisdiction is known to the Judge, no excuse is permissible,"

It is unclear how the Respondent can claim that the *Bradley* case is not a case involving a clear absence of jurisdiction over the subject matter.

The Respondent on page 8 of its Brief in Opposition states:

> "In contrast, the Petitioners ignore cases that show that the Federal right of due process only arises where there is a fundamental absence of any and all right of the State to take cognizance of the cause as a matter of state law".

However, Counsel for Respondent fails to cite any authority for such a statement. Further, its counsel alleges:

> "However, where the contentions are confined to jurisdiction in the sense of a duty to rightfully decide those subjects to which the judicial power of a State extends, there is no protection by the due process clause of the Fourteenth Amendment."

Again Respondent Counsel fails to set forth any authority in support of such a contention. Not only does counsel fail to cite authority, he fails to explain fully the meaning of the allegation and how it applies to this case.

Respondents Counsel's last sentence on page 8 is non-applicable. The Petitioner does not claim the Court committed an error of law in "The performance of its duties and within the scope of authority of the Court".

Petitioner contends that because of the State Statute which limits the Court's authority, the Court did not possess the authority for the Court to commit an error of law.

"It is undisputed that a judge must be cognizant of any given effect to the statutes and rules of his jurisdiction, *Miller v. Wellingham*, 400 F. 2d 873 (1968) *In re: SGRO* 310 A. 2d 459 (N.J. 1973).

The law in New Hampshire is clear and long standing:

> "Where exclusive jurisdiction is expressly conferred upon a Court, no other tribunal may exercise such jurisdiction. Waivers cannot confer subject matter jurisdiction where it does not exist, and any action taken by the Court without jurisdiction is void and may be challenged at any stage of the proceedings *Cooperman v. MacNeil,* 91 N.H. 42 (1940) and is presently the same. *Close v. Fisette*, 776 A. 2d 131 (2001)"
>
> > "A decision rendered by a Court without subject matter jurisdiction is void."

In fact the United States Supreme Court is so protective of Constitutional rights of parties before the Courts that it has determined that a judge who acts on subject matters over which the Court lacks jurisdiction loses his judicial immunity. *Stump v. Sparkman,* 435 U.S. 354, 98 S. Ct. 1099 (1978) *Bradley v. Fisher*, 13 Wall 335 (1871).

The United States Supreme Court has determined:

> "When the statute claim to restrict authority is not merely technical but embodies a strong policy concerning the proper administration of judicial business, this Court has treated the alleged defect as "jurisdictional" and agreed to consider on direct review even though not raised at the earliest practicable opportunity."

It is submitted the requirements of R.S.A. 491:7 and R.S.A. 502-A:14i, which limit jurisdiction of claims under $1,500. to the District and Municipal Courts are not merely technicalities but reflect the State's policy concerning the proper administration of judicial business.

It is unclear to Petitioners that Respondent cannot comprehend the connection between their claim that N.H. Superior Court acted beyond the jurisdictional limits set by N.H. Law and the Fourteenth Amendment to the U.S. Constitution which states in part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, *deprive any person of life, liberty or property without due process of law,* nor deny to any person within its jurisdiction the equal protection of law." (emphasis added)

Clearly, for a Court to violate the state statutes which limit subject matter jurisdiction and enters an order concerning a subject matter over which it has no jurisdiction deprives a person of property in that due process, contrary to the position of the Respondent.

Respectfully Submitted,

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